

# State of South Dakota

## EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

453L0572

### SENATE TRANSPORTATION COMMITTEE

### ENGROSSED NO. **SB 207** - 02/08/2005

Introduced by: Senators Apa, Greenfield, Hansen (Tom), Hundstad, Knudson, McNenny, and Napoli and Representatives Novstrup, Glover, Hargens, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain mobile and manufactured home provisions  
2 related to taxation, fees, titling, and penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-2.1 be amended to read as follows:

5 10-45-2.1. Sales of sectional homes are subject to sales tax, which shall be based upon the  
6 fair market value of the raw materials used to construct each home.

7 For the purpose of this section, "~~sectional homes~~" the term, sectional homes, means any  
8 home pre-built in whole or in part for the purpose of permanent placement on a foundation.  
9 Mobile homes as defined in subdivision 32-3-1(8) and manufactured homes as defined in  
10 subdivision 32-3-1(6) are not sectional homes.

11 Section 2. That § 10-46-5.1 be amended to read as follows:

12 10-46-5.1. If a sectional home is permanently affixed to real property, it is not a vehicle  
13 subject to registration under chapter 32-3, and shall be classified as real property. A contractor  
14 who erects such a home shall hold a sales tax or use tax license and pay use tax based upon the  
15 fair market value of the raw materials used to construct and erect the home.



For the purpose of this section, the term, sectional home, means any home pre-built in part or in whole for the purpose of permanent placement on a foundation. ~~A mobile home~~ Mobile homes as defined by subdivision 32-3-1(8) and manufactured homes as defined in subdivision 32-3-1(6) is ~~are~~ not a sectional ~~home~~ homes.

Section 3. That § 32-5-16.1 be amended to read as follows:

32-5-16.1. In addition to any other license fees, registration fees, and compensation for the use of the highways, the registrant shall pay to the county treasurer upon application for the ~~first~~ or original initial registration of a mobile home or manufactured home in this state, an additional license fee at the rate of ~~three~~ four percent of the purchase price of ~~such~~ the mobile home or manufactured home. ~~Purchase~~ The purchase price shall be established by a bill of sale. However, if a bill of sale is not available, the retail book value shall be used to establish the purchase price. The retail value ~~shall be~~ is the value in a nationally recognized dealer's guide adopted by the secretary. ~~The secretary shall file notice of adoption of the guide with the secretary of state. Such adoption and filing is not subject to chapter 1-26. The payment of such license fee shall be in full and in lieu of all occupational, sales, excise, privilege, and franchise taxes levied by this state upon the gross receipts from all sales of mobile homes. The governmental or public entities set forth in §§ 32-5-42 and 32-5-42.1, are exempted from the initial registration imposed by this section. The payment of the initial registration fee is in lieu of the tax imposed pursuant to chapters 10-45, 10-46, and 10-46A, and all other occupational, sales, excise, privilege, and franchise taxes levied by this state upon the gross receipts from the sale or installation of mobile or manufactured homes. The governmental or public entities set forth in §§ 32-5-42 and 32-5-42.1 are exempted from the initial registration imposed by this section.~~

Section 4. That § 32-5-16.2 be amended to read as follows:

1        32-5-16.2. ~~Fifteen~~ Eleven and one-fourth percent of the ~~license~~ four percent initial  
2 registration fee prescribed by § 32-5-16.1 shall be deposited in the state motor vehicle fund to  
3 defray costs of titling, registration, and for unusual use of the highway. ~~The remaining~~  
4 ~~eighty-five~~ Sixty-three and three-fourths percent shall be distributed to the county highway and  
5 bridge fund in the county where the mobile or manufactured home is registered. The remaining  
6 twenty-five percent shall be distributed to the state general fund.

7        Section 5. That § 32-5-16.3 be amended to read as follows:

8        32-5-16.3. Any person who moves a mobile home or manufactured home shall obtain a  
9 permit, as prescribed by the secretary of revenue and regulation , from the county treasurer  
10 where the home is located. The permit ~~fee~~ is valid for a single trip from the point of origin to  
11 a point of destination within the state. Before the county treasurer may issue a permit, the owner  
12 of the mobile home or manufactured home or regulated lender as defined in § 54-3-14 that is  
13 repossessing the mobile home or manufactured home shall obtain an affidavit, as prescribed by  
14 the secretary of revenue and regulation , from the county treasurer stating that the current year's  
15 taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3. The permit fee  
16 for mobile homes and manufactured homes for use on the public highways is fifteen dollars. The  
17 fees collected shall be credited to the license plate special revenue fund. The fee and permit  
18 imposed by this section does not apply to a new or used mobile home or manufactured home  
19 owned and transported by or for a dealer licensed under chapter 32-7A. A violation of this  
20 section is a Class 2 misdemeanor. A dealer shall obtain from the department self-issued permits  
21 and shall display a self-issued permit when moving a used or new mobile or manufactured  
22 home.

23        Section 6. That § 32-5-16.4 be repealed.

24        ~~32-5-16.4. Any transport of a used mobile home or manufactured home by a transporter shall~~

1 ~~be accompanied with a notification form, as prescribed by the secretary of revenue and~~  
2 ~~regulation, stating the point of origin and the point of destination. The transporter shall provide~~  
3 ~~a copy of the notification form to the director of equalization in the county of origin and the~~  
4 ~~county of destination. This section does not apply to any transport regulated under chapter 32-~~  
5 ~~7A. A violation of this section is a Class 2 misdemeanor.~~

6 Section 7. That § 32-5-16.5 be repealed.

7 ~~— 32-5-16.5. Any transport of a used mobile home or manufactured home by a transporter shall~~  
8 ~~be accompanied with an affidavit from the county treasurer of the county in which the used~~  
9 ~~mobile home or manufactured home is registered, stating that the current year's taxes are paid~~  
10 ~~as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3. This section does not apply to~~  
11 ~~any transport regulated under chapter 32-7A. A violation of this section is a Class 2~~  
12 ~~misdemeanor.~~

13 Section 8. That § 32-5-16.6 be amended to read as follows:

14 32-5-16.6. If the owner of the used mobile home or manufactured home, prior to moving the  
15 home, fails to obtain an affidavit from the county treasurer of the county in which the used  
16 mobile home or manufactured home is registered, stating that the current year's taxes are paid  
17 as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall  
18 assess a ~~civil~~ monetary penalty on the owner. If a regulated lender, as defined in § 54-3-14, is  
19 repossessing a used mobile home or manufactured home and fails to obtain an affidavit, prior  
20 to moving the home, from the county treasurer of the county in which the used mobile home or  
21 manufactured home is registered, stating that the current year's taxes are paid as described in  
22 §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall assess a ~~civil~~  
23 monetary penalty on the lender. The ~~court~~ department shall levy a ~~civil~~ monetary penalty of two  
24 hundred fifty dollars for the first violation within a one-year period, five hundred dollars for the

1 second violation within a one-year period, and one thousand dollars for each subsequent  
2 violation within a one-year period. All ~~civil~~ monetary penalties collected pursuant to this section  
3 shall be deposited in the ~~county general fund of the county in which the used mobile home or~~  
4 ~~manufactured home is registered~~ motor vehicle fund. The county treasurer shall notify the  
5 Department of Revenue and Regulation in writing of any violation ~~resulting in a civil penalty~~  
6 ~~assessment~~ for failure to obtain a tax affidavit prior to moving a mobile or manufactured home.

7 Section 9. That § 32-5-16.7 be amended to read as follows:

8 32-5-16.7. If a transporter of a used mobile home or manufactured home, prior to  
9 transporting, fails to obtain an affidavit from the county treasurer of the county in which the  
10 used mobile home or manufactured home is registered, stating that the current year's taxes are  
11 paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall  
12 assess a ~~civil~~ monetary penalty on the transport owner. If a manufacturer or licensed dealer, as  
13 defined in chapter 32-7A, is moving, repossessing, trading, purchasing, or receiving onto the  
14 manufacturer's or licensed dealer's lot a used mobile home or manufactured home and fails to  
15 obtain an affidavit from the county treasurer of the county in which the used mobile home or  
16 manufactured home is registered, stating that the current year's taxes are paid as described in  
17 §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall assess a ~~civil~~  
18 monetary penalty on the manufacturer or licensed dealer. The transporter or dealer who was  
19 responsible for moving the mobile or manufactured home is liable for any property taxes due  
20 the county.

21 The ~~court~~ department shall levy a ~~civil~~ monetary penalty of two hundred fifty dollars for the  
22 first violation within a one-year period, five hundred dollars for the second violation within a  
23 one-year period, and one thousand dollars for each subsequent violation within a one-year  
24 period. All ~~civil~~ monetary penalties collected pursuant to this section shall be deposited in the

1 ~~county general fund of the county in which the used mobile home or manufactured home is~~  
2 ~~registered~~ motor vehicle fund. The county treasurer shall notify the Department of Revenue and  
3 Regulation in writing of any violation ~~resulting in a civil penalty assessment~~ for failure to obtain  
4 a tax affidavit prior to moving a mobile or manufactured home.

5 Section 10. That § 32-5-16.8 be amended to read as follows:

6 32-5-16.8. For the purposes of §§ 32-5-16.6 and 32-5-16.7, if the owner, lender, licensed  
7 dealer, or transporter are the same party the ~~court~~ department may not assess multiple ~~civil~~  
8 monetary penalties for any one violation.

9 Section 11. That § 32-9-57 be amended to read as follows:

10 32-9-57. Any commercial motor carrier located in the state hauling a new trailer ~~or a new~~  
11 ~~or used manufactured or mobile home~~ with a manufacturer's statement of origin or certificate  
12 of title and who has registered with the Department of Revenue and Regulation as a transporter  
13 may use a transporter plate upon the streets and highways for in-transit purposes. The fee for  
14 a transporter plate is fifty dollars and the fee shall be deposited in the license plate special  
15 revenue fund. Any new trailer with a transporter plate may be used to haul other new trailers.  
16 No transporter may use a transporter plate for any other purpose. A violation of this section is  
17 a Class 1 misdemeanor.

18 Section 12. That § 32-9-57.1 be amended to read as follows:

19 32-9-57.1. The department may, pursuant to chapter 1-26, revoke or suspend the transporter  
20 plate issued pursuant § 32-9-57 which belongs to any transporter ~~who the court has assessed a~~  
21 ~~civil penalty pursuant to § 32-5-16.7 four or more times within a one-year period~~. It is a Class  
22 1 misdemeanor for any transporter to fail or refuse to surrender to the department upon its  
23 lawful demand any transporter plate which has been revoked or suspended.

24 Section 13. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person against whom a penalty is assessed pursuant to section 8 or 9 of this Act may  
3 request a hearing before the secretary if the person believes that the assessment is based upon  
4 a mistake of fact or an error of law. A request for hearing shall be made in writing within twenty  
5 days from the date of the assessment and shall contain a statement indicating the mistake of fact  
6 or error of law the person believes resulted in an invalid assessment. Amended or additional  
7 statements of facts or errors of law may be made not less than fourteen days prior to the hearing  
8 if the hearing examiner determines such additional or amended statements are in the interest of  
9 justice and do not prejudice either party. Hearings are conducted and appeals taken pursuant to  
10 the provisions of chapters 1-26 and 1-26D.

11 A copy of the hearing examiner's proposed decision, findings of fact and conclusions of law  
12 shall be served on all parties when furnished to the secretary. If the secretary, pursuant to chapter  
13 1-26D, accepts the final decision of the hearing examiner, no appeal from a final decision of the  
14 secretary upon an assessment may be taken unless any amount ordered paid by the secretary is  
15 paid or a bond filed to insure payment of such amount. However, if the final decision of the  
16 secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the hearing examiner  
17 regarding the amount due on the assessment, an appeal may be taken without payment of the  
18 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed  
19 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the  
20 secretary is paid or a bond is filed to insure payment of such amount.

21 Section 14. That § 32-7A-11 be amended to read as follows:

22 32-7A-11. New and used mobile homes and manufactured homes owned by a dealer may  
23 be transported upon the streets and highways to the dealer's place of business and to the  
24 purchaser of such a home and between a dealer's place of business and a supplemental lot or a

1 temporary supplemental lot. ~~Any mobile home or manufactured home purchased or transported~~  
2 ~~by or for a dealer shall be accompanied with a notification form stating the point of origin. The~~  
3 ~~dealer shall provide a copy of the notification form to the director of equalization in the county~~  
4 ~~of origin.~~

5 Section 15. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 An owner of a mobile or manufactured home fixed to real property owned by the applicant  
8 may request that the title to the home be surrendered if a title has been issued in accordance with  
9 § 32-3-3.1 and payment of the initial registration fee has been made in accordance with § 32-5-  
10 16.1. A request shall be submitted on forms prescribed by the secretary. If the application and  
11 the request to surrender the statement of ownership are submitted simultaneously, the  
12 department shall only create an electronic record indicating ownership of the home and may not  
13 issue a paper title. The department may not notate any liens on a title if a paper title is not  
14 issued.

15 Section 16. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 An owner of a mobile or manufactured home may choose to obtain a title on a mobile or  
18 manufactured home whose title was surrendered. Before the mobile or manufactured home is  
19 removed from real property, the owner shall submit to the department a current tax affidavit  
20 from the county treasurer in which the mobile or manufactured home was located and an  
21 affidavit stating that the home is no longer subject to a real property mortgage or any other liens.  
22 The owner shall also furnish the department an independent report that lists the legal description  
23 of the real estate upon which the mobile or manufactured home is located, any liens or  
24 encumbrances against the mobile or manufactured home or the real estate upon which the



1 mobile or manufactured home is located, and the current owner of the mobile or manufactured  
2 home. The independent report shall also contain an affidavit stating a lien search was conducted  
3 of all records of the register of deeds, clerk of courts, the treasurer in the county where the  
4 mobile or manufactured home is located, and the secretary of state and shall describe any liens  
5 revealed by that search. If any liens or encumbrances exist against the mobile or manufactured  
6 home, the applicant shall obtain a release from each lienholder prior to issuance of a title. The  
7 department is not responsible for any mistakes in the issuance of the title resulting from  
8 documents provided pursuant to this section.